IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Misc. No. 6685-M of 2007

Date of Decision : 02.05.2007

Sushil Kumar Jain

... Petitioner

Versus

State of Haryana

... Respondents

CORAM : HON'BLE MR. JUSTICE S.D. ANAND

Present : Mr. Ashwani Verma, Advocate,
for the petitioner.

Mr. Himanshu Raj, Assistant Advocate General, Haryana.

S.D. ANAND, J.

In case FIR No. 343 dated 05.07.2002, under Sections 419 / 420 / 468 / 471 / 193 / 201 / 120-B of the Indian Penal Code and 3/14 of Foreigners Act, the police of Police Station City Hisar forwarded a number of accused (other than the petitioner-accused) to stand trial. The petitioner was indicated in column no.2 of the report under Section 173 Cr.P.C. On the presentation of the report under Section 173 Cr.P.C., (and at the time of consideration of charge), the learned Trial Magistrate passed the following order:-

> "Today case is fixed for consideration of Charge. Both parties heard. During course of argument it comes to the knowledge of this Court that Sushil Kumar Jain who has not been charge sheeted, is a prime accused in the present case. Sushil Kumar

Jain has attested a ration card form. Hence, keeping in view of the report produced u/s 173 Cr.P.C. prima facie there are sufficient grounds to proceed against the accused for face trial in the present case. Hence, now the accused Sushil Kumar Jain be summoned u/s 319 of Cr.P.C. for 5.12.2003. Accused Asgar Ali, who is in custody be produced on 5.12.2003.

Warrant of arrest against accused Superintendent of Police, District Jail, Bikaner not received back. A copy of letter forwarded by Superintendent Central Jail Bikaner also placed on case file. Fresh warrant for arrest against accused to Superintendent District Jail Bikaner be issued for the date fixed. Accused who are on bail are directed to appear before this Court on 5.12.2003. Till then accused Asgar Ali is remanded to Judicial custody."

The endeavour made by the petitioner to get that order set aside, by filing a revision petition before the Court of Sessions, did not invite any fruitful result inasmuch as the petition preferred by him was dismissed by the learned Additional Sessions Judge, Hisar vide order dated 29.09.2006 (Annexure P/3).

The petitioner has filed the present petition under Section 482 Cr.P.C. in order to obtain invalidation of the orders dated 21.11.2003 and 11.02.2004 passed by learned Judicial Magistrate 1st Class, Hisar (Annexure P/1 and P/2) and order dated 29.09.2006 passed by learned Additional Sessions Judge, Hisar (Annexure P/3).

It is beyond the pale of controversy that the petitioner had been shown in column no.2 in the report under Section 173 Cr.P.C. when the

challan was presented to the Court. It was at the stage of consideration of charge only that the learned Magistrate took cognizance of the fact that the petitioner had been indicated in column no.2 and he (learned Trial Magistrate) proceeded to order the summoning of the petitioner in exercise of the power vested in him under Section 319 Cr.P.C.

I have heard the learned counsel for the parties and perused the record.

There is plethora of law on the point that the summoning of an additional accused in such an eventuality and on the authority of the provisions of Section 319 Cr.P.C. would be permissible only after at least some bit of evidence has been recorded at the trial. This view is buttressed by 2003(1) R.C.R. (Criminal) 801 (Kavis Kumar versus State of Punjab), 2004(2) R.C.R. (Criminal) 270 (Jarnail Kaur versus State of Punjab) and 1998 A.I.R. (SC) 3148 (Ranjit Singh versus State of Punjab). The first two indicated are the rulings rendered by a Single Judge of this Court; whereas the last indicated is a ruling rendered by the Apex Court. Apart therefrom, it was held in 2005(2) R.C.R. (Criminal) 217 (Sanjay Dalmia versus State of Haryana) that the Court cannot summon a person as accused on the basis of statements of witnesses under Section 161 Cr.P.C. In a way, that is precisely what the impugned order has done. In the present case, the accused have not yet been charge-sheeted. Not even a bit of evidence at the trial has been recorded. The police found the petitioner to be innocent and it is on account of that finding only that he was shown in column no.2 of the report under Section 173 Cr.P.C. There was no material whatsoever before the learned Magistrate to disagree with the police finding and to proceed to order the summoning of the petitioner to stand trial as an additional accused.

The impugned order shall stand quashed accordingly. At the same time, it is made clear that it would not debar the exercise of jurisdiction under Section 319 Cr.P.C. by the learned Magistrate on motion by the concerned party after any part of the evidence at the trial indicating legal accountability of the petitioner has been recorded.

May 02, 2007 (S.D. ANAND)
vkd JUDGE